Southwestern Bell Mobile Systems

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July 16, 1993

Linde M. Heed Attorney

<u>Via Airborne</u> 4158629963

DECEMED

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Stop Code 1170
Washington, D.C. 20554

JUL 1 9 1993

FCC - MALLE IN

RE: PR Docket No. 93-144; Filing of Comments of Southwestern Bell Corporation

Dear Mr. Caton:

Enclosed for filing in the above referenced proceeding are the original and five copies of the Comments of Southwestern Bell Corporation. Please file these Comments among the papers in this proceeding.

Please return a file-marked copy of the Comments to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance.

Very truly yours,

finda M. Hood

Enclosure

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION JUL 19 1993

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In the Matter of	S	
	S	PR DOCKET NO. 93-144 /
Amendment of Part 90 of the	S	
Commission's Rules to	S	
Facilitate Future Development	S	RM-8117, RM-8030, RM-8029
of SMR Systems in the	S	
800 MHz Frequency Band	S	

COMMENTS OF SOUTHWESTERN BELL CORPORATION ON NOTICE OF PROPOSED RULE MAKING

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ATTORNEYS FOR SOUTHWESTERN BELL CORPORATION

Dated: July 19, 1993

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SUMMARY

SBC supports the goals of expansion of wireless services to the public under regulation that is applied equally to all service providers. The Commission's proposals, however, are largely skewed in favor of existing wide-area operators like Fleet Call (Nextel) and not at introducing or fostering meaningful competition or comparable regulation for EMSP providers and other wireless service providers. Competition and the public interest will be far better served by amending the Commission's proposals to include the following elements:

- Equalize the regulatory burdens placed on wireless service providers of all categories, including cellular, PCS and EMSP.
- Make all qualified providers, including wireline telephone common carriers, eligible to receive licenses.
- License EMSP in the already existing MSA/RSA service areas rather than the larger MTA or BTA service areas.
- Allow licenses to be granted initially and to migrate subsequently to those who value them most and can provide efficient, advanced service.
- Employ a qualified bidding device.
- Structure EMSP regulations that do not unreasonably discriminate in favor of existing SMR licensees.
- Allow licensees use their capital efficiently rather than tying it up in construction budget escrow accounts.

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To: The Federal Communications Commission

COMMENTS OF SOUTHWESTERN BELL CORPORATION

Southwestern Bell Corporation ("SBC"), on behalf of its operating subsidiaries and affiliates, submits these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") released June 9, 1993, in the above-referenced matter.

I. Introduction

SBC supports the efforts of the Commission to expand the variety and availability of wireless services to the public. SBC has been and remains active in the provision of wireless services through its cellular subsidiary, Southwestern Bell Mobile Systems, Inc. ("SBMS")¹ and SMR services through Metromedia Paging Services ("MPS"). Like the FCC, SBC believes in expanding the wireless services available to the

¹SBMS is a wholly-owned subsidiary of Southwestern Bell Corporation ("SBC"), a publicly traded corporation. Through its various ownership interests, SBMS is one of the largest providers of cellular telephone service in the United States and has been a leader in the development and implementation of advanced telecommunications technologies.

public and is interested in participating in that expansion as one of the operators eligible for the EMSP licenses described in the NPRM.

SBC specifically supports the Commission's proposals that equalize the regulatory requirements imposed on this type of wireless service and cellular service, including the proposals to utilize uniform, rather than licensee-defined, service areas; to exempt EMSP licensees from the 5 channel limit, 40mile rule, and any loading requirements; and to allow additional time for system buildout. However, SBC strongly urges the Commission to modify other of its proposals to move toward this same goal, by adopting the following revisions: (1) allow LECs and their cellular affiliates to hold EMSP licenses; (2) specify MSAs and RSAs as the EMSP standard licensing area; (3) use either a qualified lottery or qualified bidding or auctioning mechanism for licensing; (4) forbear from granting existing wide area SMR licensees an undue advantage in the licensing procedure or construction requirements; (5) allow licenses to migrate to those operators who value them most and can best make use of them; and (6) not require new licensees to place their entire five year construction budget in escrow or put up a performance bond for the same amount, and not penalize failure to estimate one's budget correctly by license forfeiture.

II. The Commission Should Strive for Regulatory Parity

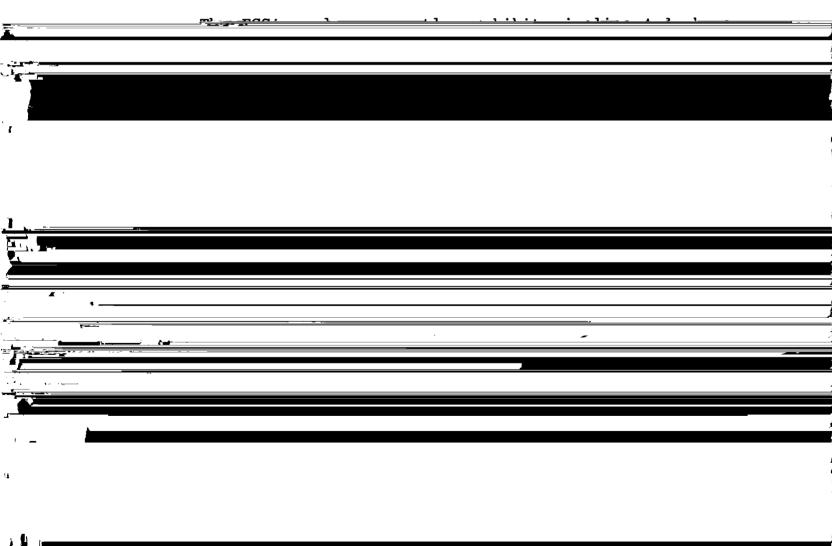
The Commission states that when it developed rules for SMR, it envisioned that SMR would be used primarily for dispatch service to eligible customers, and it therefore designed the rules to govern operations within limited local However, the wide-area systems being NPRM ¶ 2. proposed by the Commission within the bands of spectrum traditionally allocated for dispatch-type services do not even approximate those dispatch-type services. Rather, they parallel and will compete with other wireless services offered to the general public for interconnected mobile service. Now that some SMR operators intend to expand beyond dispatch services (and in all likelihood abandon their dispatch customers in the process) to provide wide-area wireless services, the Commission feels that it is time to amend Part 90 of its rules.

Although Part 90 is titled <u>Private</u> Land Mobile Radio Services, the services contemplated by the NPRM are anything but private, contemplating "extensive interconnection with the public switched telephone network, transmission of data, and various personal communications services." NPRM ¶ 37. SBC questions whether EMSP regulation is even appropriately located within Part 90,² but regardless of location or title,

²Legislation is currently pending that would eliminate the distinction between private and common carrier "commercial mobile service" providers. S. 332, 103 Cong., 1st Sess. § 9 (1993). SBC supports this legislation and believes that all carriers providing similar services should be regulated the

this publicly available wireless service must be regulated on a par with cellular and other publicly available wireless services if the public interest is to be protected. If the Commission deems it to be in the public interest to reallocate spectrum³ from dispatch customers to customers of a wireless service that competes with traditional cellular service, as the NPRM will effectively do, the Commission must ensure that regulatory parity exists between providers of traditional cellular service and traditional SMR operators.

III. Wireline Telephone Common Carriers and their Affiliates
Should Be Eliqible for EMSP Licenses



Local exchange carriers ("LECs") and their cellular affiliates should not be prohibited from receiving either traditional SMR licenses or the new EMSP licenses. All of the goals that the Commission wishes to achieve -- development of operations, efficient innovative wide-area SMR spectrum, diversity of mobile communications services -- will be more readily accomplished if the Commission allows some of the most experienced and efficient wireless operators to participate in the process. The key to innovative competitive wireless services is regulatory parity among the various types such services. Manv of the same and operators of considerations put forward by SBC in its comments in the PCS docket are relevant to this issue and should be considered and adopted here.5

In the Commission's PR Docket No. 86-3, <u>In the Matter of</u>

Amendment of Part 90 of the Commissions' Rules Governing

Eliqibility for the Specialized Mobile Radio Services in 800

MHz Land Mobile Band (hereinafter "SMR Eliqibility Docket"),

the Commission initially proposed to eliminate the wireline restriction on the ground that this change would make

common carriers, thus addressing only the LECS. If, in fact, the Commission does not view affiliates of telephone common carriers to be excluded by section 90.603(c), SBC requests that it clarify that position.

^{5&}lt;u>See</u> Comments of Southwestern Bell Corporation, filed November 9, 1992, <u>In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services</u>, General Docket No. 90-314; ET Docket No. 92-100 (hereafter "SBC's PCS Comments").

available more efficient service to the public by enhancing competition. The Commission observed in that NPRM that elimination of the restriction would create an unregulated, competitive marketplace environment for the development of telecommunications. The Commission went so far as to admit that the origin of the wireline restriction was never explicitly discussed either in the Docket imposing it or in any subsequent proceedings. Thus, contrary to statute and the most basic principles of administrative law, the wireline restriction was imposed and remains in place without the required public interest determination even being discussed, much less made. As such, the rule is and remains invalid. See Home Box Office, Inc. v. FCC, 567 F.2d 9,35-36 (D.C. Cir. 1977).

Later, in PR Docket No. 92-235, <u>In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, the Commission proposed a new Rule 88.17 that would provide that in the 220-222 MHz, 806-821-851-866 and 896-901-935-940 MHz bands, wireline telephone common carriers would be</u>

affiliates to hold SMR or EMSP licenses. No authority for or public interest showing has been or can be made to support this restriction. Accordingly, any restriction on the eligibility of licensees, particularly that which would prohibit qualified and financially secure providers of SMR service, should be abandoned.⁸

The SMR and EMSP public would be served by a wide choice of carriers vying for their business with an array of innovative and customized applications. No coqent reason for initial implementation of a Rule prohibiting participation by wireline common carriers in SMR services ever existed, and in light of the practical experiences of wireline common carrier affiliates in the cellular industry, none can reasonably be claimed to exist now. Indeed, experience in the SMR market indicates that such demand is both stimulated increasingly, satisfied by wireline carrier participation.

In 1986, SBC obtained a conditional waiver of the current wireline restriction, pending the outcome of the PR Docket No. 86-3, to allow SBC to acquire the assets of MPS. That acquisition, part of a much larger undertaking that included cellular services, added a growing and intensively competitive set of markets and services to the SBC family. In those markets where demand for SMR services is increasing, the number of SMR customers served by MPS has increased

^{*}SBC refers to and incorporates herein its Comments, filed May 28 1993 in Docket No. 22-325

dramatically. In fact, subsequent to the grant of the conditional waiver, MPS was granted additional channels by the Commission to allow it to accommodate the growing demand by its customers. MPS has significantly increased the number of customers and channel capacity it brought to SBC in 1987.

Also since 1987, MPS has invested substantial amounts of money to upgrade and expand its SMR services, based largely upon this explosive growth in demand. Since its acquisition

The embedded infrastructure for SMR systems is valued at between 850 and 950 million dollars. Most analysts predict continuing steady growth and increasing competition. Continued growth in the number of SMR licensees and in the amount of capital generated by SMR service providers compels the conclusion that the holding of SMR licenses by affiliates of wireline common carriers, such as SBC, have had no anticompetitive impact on the market. Experience indicates that purchasers of SMR services are interested in efficient and effective service, and not in whether their carrier is "wireline" or not. Commission policy, both in the past and as is being formulated in this NPRM, permits and encourages SMR operations to become multi-service generalized mobile providers to an unlimited class of users, far from the specialized end user oriented service originally contemplated when SMR service was introduced and the wireline limitation In short, wireline carriers and their affiliates can bring to the SMR and EMSP business the marketing, technical, and implementation expertise necessary to serve this expanding and demanding market segment.

Additionally, wireline common carriers, and particularly SBC, bring a proven ability to develop an efficient service communications network, which is amply demonstrated in the operations of SBMS. The expertise of this subsidiary, which is a leader in the cellular industry in several critical categories, such as market penetration, micro-cell deployment,

and digital technology standards deployment, should be reassuring to the Commission that its enunciated goal of promoting continued growth of the industry will be accomplished if wireline carriers are allowed to enter the SMR and EMSP business. NPRM ¶ 1.

Companies as large and sophisticated as Fleet Call, AT&T and large cellular common carriers like McCaw Cellular are already eligible for SMR and EMSP licenses. It is an application and unreasonably discriminatory rule that would

Consider the effect of denying wireline telephone common carriers and their affiliates from applying for EMSP licenses. A cellular carrier such as SBMS currently competes with other cellular carriers like McCaw, which already has the coverage advantage of being able to build regional service areas composed of multiple MSAs and RSAs without regard to artificial LATA restrictions, 12 as well as with carriers like Nextel, which are developing licensee-defined service areas for a service that will look much more like traditional cellular than traditional dispatch. Under the Commission's proposed rules, cellular carriers like McCaw will be eligible to compete on a more equal basis against this new type of wireless service offering by acquiring and operating competing EMSP licenses, whereas wireline affiliates like SBMS are left attempting to compete with both Nextel and McCaw by providing traditional cellular service within the limitations of its existing cellular service areas. 13 The Commission should certainly act to encourage competition in wireless services by

¹²SBMS and other BOC-affiliated cellular carriers operate within the confines of the LATA restrictions imposed in the Modification of Final Judgment ("MFJ") entered on August 24, 1982, in the United States District Court for the District of Columbia in <u>United States v. Western Electric et al.</u>; Civil Action No. 82-0192, 552 F. Supp. 131 (D.D.C. 1982).

¹³A BOC affiliate like SBMS will be additionally handicapped in the race to compete in the wireless future if the service areas licensed for this service that they are prevented from providing are significantly larger than existing cellular service areas. Not only could it not match the type of service offered, it could not match the expansive service area of an MTA or BTA.

allowing all qualified entities including wireline common carriers to be eligible for EMSP licenses.

These networks will be complex and expensive to build, particularly if the Commission implements its proposal of MTAs or BTAs. NPRM ¶ 15. The Commission, if it does not remove the LEC restriction, will be eliminating experienced companies that have built wireless networks in the past - financially strong companies that can afford to build new and expanded networks. Accordingly, the Commission should do away with any restriction on wireline common carrier entry into specialized mobile radio or EMSP services.

IV. EMSPs Should Be Licensed by MSA/RSA and Not By MTAs or BTAs

SBC concurs with the Commission's conclusion that licensee-defined service areas cannot reasonably accommodate future licensing of wide-area systems, and that it would unnecessarily complicate processing and implementation of such systems. NPRM ¶ 13. Commission-defined service areas are necessary to provide licensees with the certainty required for planning and implementation purposes, and to simplify determinations of mutually exclusive applications. Those defined service areas should be the MSAs and RSAs employed for cellular licensing. The Commission must ensure, at the very least, that all wireless service providers (including

Both the 47 Major Trading Areas ("MTAs") and 487 Basic Trading Areas ("BTAs") offered for consideration by the Commission, NPRM ¶ 15, would create much larger service areas for EMSP than the 734 Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs") upon which cellular systems were licensed. For example, the Dallas MTA alone stretches from Monroe, Louisiana to Dallas and on to Hobbs, New Mexico, picking up pieces of Arkansas and Oklahoma along the way. It encompasses 17 MSAs¹⁴ and all or part of 29 RSAs¹⁵ being operated by approximately 60 different licensees in five different states. See the map attached hereto as Exhibit A.

The Commission's apparent concern that a licensing area must be as large as a BTA or MTA for a licensee to achieve the economies of scale necessary for state-of-the-art service is unfounded. NPRM ¶ 15. Cellular service providers faced the same challenges with respect to economies of scale and striving to provide mobile customers with coverage sufficient to meet their day to day business and personal needs. They have met these challenges and provided a competitive and efficient product for their customers. Cellular service is

¹⁴It encompasses all of the following MSAs: Dallas, Sherman, Austin, Killeen, Lubbock, Amarillo, Waco, Longview, Abilene, Wichita Falls, Tyler, Texarkana, Odessa, San Angelo, Midland, Monroe and Shreveport.

¹⁵It encompasses all of Texas RSAs 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, and 14; and Louisiana RSAs 1 and 2. It encompasses parts of Texas RSAs 10, 11, 12, 15, 16, and 18; Louisiana RSAs 3 and 4; New Mexico RSAs 2, 4, and 6; Arkansas RSAs 9 and 11; and Oklahoma RSAs 1, 9, and 10.

provided by at least one carrier in every market area licensed by the Commission and in the overwhelming majority of these markets, two carriers operate today. The cellular industry now has in excess of eleven million customers receiving service throughout the nation. Growth in the employment by the cellular industry alone has increased from less than 1,500 employees in 1985 to nearly 35,000 at the end of 1992. the cellular affiliates of BOCs, which operate under the competitive disadvantage of the additional restrictive overlay of LATA boundaries on their service areas have managed to provide competitive services to their customers. See SBC's Further, the Commission is rightly concerned PCS Comments. that the MTAs exceed the anticipated geographic boundaries of SBC submits that evolving SMR service offerings. NPRM ¶ 15. BTAs as well may suffer from this defect.

As the Department of Justice observed in its comments in the PCS docket, assigning licenses by smaller, rather than larger, service areas, coterminous with cellular MSAs/RSAs will create the greatest possibility that the licenses would come to be held by operators with the intention, financial resources, and expertise to develop services that meet what might be quite varied local consumer demand. To the extent that a competitive market dictates that service areas larger

¹⁶Comments of the United States Department of Justice, filed November 9, 1992, <u>In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services</u>, General Docket No. 90-314; ET Docket No. 92-100, pp. iii, 19-23.

than an MSA need to exist, competitive forces will move to consolidate licenses through operating agreements, marketing and management agreements, switching agreements, roaming arrangements, leasing of spectrum and/or transfers. By starting with smaller service areas, but permitting consolidation of service areas in these ways, the Commission will facilitate any market adjustment needed to achieve efficient service areas.

Smaller, rather than larger, service areas afford a variety of other advantages as well. More areas and a greater percentage of the population are more likely to be serviced sooner if there are more smaller areas being built out by a number of licensees. Then, instead of a single licensee struggling to spread itself out over an area as potentially enormous as an MTA within five years, there could be as many as sixty licensees working simultaneously to serve the same

depriving the public of service and wasting valuable spectrum that could be more effectively utilized by a greater number of licensees working to serve a more local population.¹⁷

If new EMSP licensees are given larger coverage areas than cellular providers, and LEC-affiliated cellular providers are not allowed to obtain similar licenses, then those cellular carriers will be placed at a significant competitive disadvantage vis-a-vis the new entrants. Coverage area is the single most critical selling point for wireless services. If one wireless service provider has a larger coverage area than another, it will enjoy substantially greater success in selling its services, and the carrier with the smaller service area will be at a significant competitive disadvantage vis-a-vis the other carrier. Consequently, the Commission should adopt the same service areas (MSAs/RSAs) for EMSP licensees as have been adopted for cellular service licensees.

If the Commission decides to use a service area larger than MSAs and RSAs, it should select the 487 BTAs and reject the 47 MTAs. The BTAs should be preferred over the larger MTAs because the initial investment to offer wide-area SMR service is likely to be very large. If the service area is too expansive, many small entrepreneurs could be foreclosed

¹⁷For example, the Dallas MTA encompasses approximately 215,000 square miles. A carrier could serve 80% of the MTAs population of 9.8 million by covering metropolitan areas accounting for approximately 71,000 square miles -- about one third of the total geographic area. The incentive structure with a service area this large is to leave two-thirds of the area, or 144,000 square miles unserved, at least initially.

from participating. They may not be able to secure the necessary funding to build out systems capable of serving an entire licensed area as large or even larger than a BTA. By adopting service areas larger than BTAs, the Commission could be limiting the very diversity that it seeks and making a number of small entrepreneurs de facto ineligible for EMSP service, which result would not be in the public interest.

To avoid these inequitable and undesirable results, the Commission should adopt service area parity for all wireless service providers, including cellular, and should therefore adopt the MSA/RSA service areas. This is consistent with SBC's position in the PCS docket¹⁸ and should govern with respect to licensing for all current and future wireless offerings.

V. The Commission Should Develop Licensing Procedures That Discourage Speculators

Perhaps the most serious defect in the Commission's proposed licensing procedure is that it does not eliminate the existing prohibition in Subpart S on the participation of wireline common carriers. As discussed previously, such carriers can and would bring a wealth of experience to the marketplace and should be eligible to participate on the same footing as any other carrier. At the very least, they should be able to acquire existing SMR licenses from others and to enter into management agreements with others, thus becoming

¹⁸SBC's PCS Comments, pp. 20-24.

eliqible for the lottery in that way.

If lotteries are chosen as the licensing mechanism for EMSP (NPRM ¶ 28), SBC advocates the use of a "qualified" lottery. Under the qualified lottery method, applicants would be required to meet certain threshold requirements pertaining to financial viability, technical expertise, managerial experience, and a demonstrated commitment to offer the proposed service. These requirements are necessary to avoid a flood of applications from mere speculators without the intention, much less the capability, to ever construct a widearea SMR system. See SBC's PCS Comments.

If the Commission selects an auction or competitive bidding method (NPRM ¶ 29), it should still require that all applicants be "qualified," i.e. ready, willing and able to begin and complete construction of the proposed system within a specified time period. It should also require the same submissions required in qualified lotteries to deter applications from mere speculators.

VI. EMSP Licensing Procedures Should Not Allow Unreasonable Preferences to Existing SMR Licensees

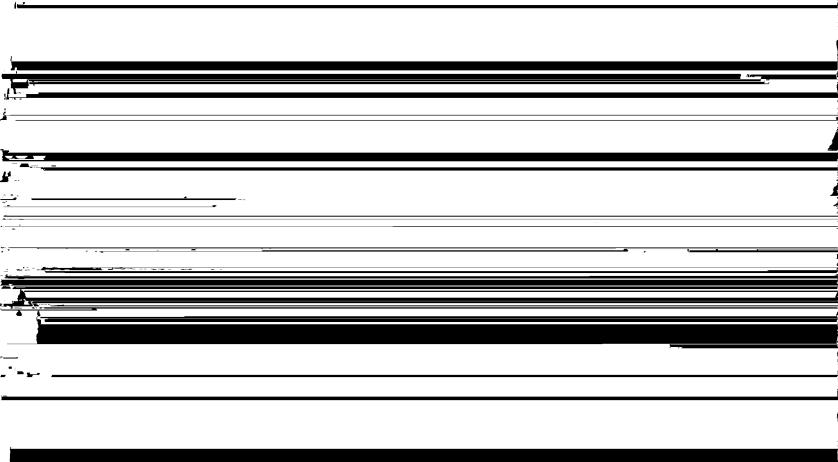
The Commission proposes initially restricting EMSP license eligibility to applicants that are licensed on one or more SMR Category channels in the relevant BTA/MTA as of May 13, 1993, and allowing those applicants to apply for a license to reuse throughout the entire BTA/MTA on all such channels that operate on constructed base stations as of the date the EMSP application is filed. The Commission supposes that the

public would benefit from a more viable and expeditiously provided EMSP service by permitting existing licensees to first convert their existing systems to wide-area operations before newcomers are authorized to operate on the licensee's channels in the relevant BTA or MTA. NPRM ¶ 24.

SBC strongly disagrees. Regardless of whether Congress authorizes auctioning or designs competitive bidding procedures for licensing channels, the Commission should not restrict the initial licensing period to existing SMR licensees, but should open licensing initially to all interested and qualified providers. There is no sound reason for giving existing licensees such a large exclusive territory based on existing licensees for particular channels in any portion, no matter how small, of that territory. Such a proposal unreasonably discriminates against new licensees

or MTA. Therefore, the Commission's rationale about utilizing the existing infrastructure to provide a quality EMSP offering is illusory, except to the extent of the geographic territory in which the existing licensee has already built such infrastructure.

Given the many channels already aggregated by certain licensees, such as Nextel, under the waiver procedure (and under rules that prohibit some of their most natural competitors from competing with them), an initial restriction on licensing could as a practical matter foreclose any other provider from obtaining a license and competing with the



to existing wide area operators by allowing them to receive area wide licenses for as many channels as it currently has licensed at any point in the area. If, however, the Commission implements BTA or MTA areas, it should restrict the initial license preference for existing operators to the geographic portion of the BTA/MTA within which it has already built stations and is providing service. To the extent that an existing licensee is operating within a self-defined service area, it may make sense to allow that licensee first rights to a license within that geographic area for those channels on which it is providing service in the area.20 Outside of those particular areas there is reason to give the existing licensees a preference in licensing channels for EMSP service. Channels licensed by that existing operator should be available for licensing and re-use throughout the remainder of the service area in another EMSP license (granted either to the existing operator or another party based on a licensing procedure that was neutral with respect to whether the applicant already operated those channels within the licensed If the existing operator did obtain the license for those channels in the remainder of the service area (either through lottery, auction, or competitive bidding) he would then be allowed to combine the two licenses in the same area for the same channels.

²⁰This is another reason to prefer the smaller and already defined MSA/RSA structure. It doesn't give as big an unreasonable headstart preference to existing licensees.